Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALAN D. TUCKER,

Petitioner,

vs.

GEORGIA DEPARTMENT OF HUMAN RESOURCES
EX. REL., DANIEL CASSEL,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of The
State Of Georgia

PETITION FOR WRIT OF CERTIORARI

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62 pp

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

Petitioner respectfully prays that a Writ of Certiorari issue to review the Order of the Supreme Court of the State of Georgia entered in the action on December 3, 1993, which denied the Petitioner's Motion For Reconsideration of the Supreme Court's denial of his Petition for Certiorari.

QUESTIONS PRESENTED FOR REVIEW

(1)

Whether Official Code of Georgia Annotated Section 19-7-45 violates the Due Process and Equal Protection Clauses of the Constitution of the United States and should be held to be unconstitutional because it requires the Trial Court to discriminate against males who have been sued by the State of Georgia in paternity actions by removing from the Trial Court

its discretion and ability to objectively review the pending facts and circumstances in the matter solely because the Petitioner was being sued by the State of Georgia Department of Human Resources?

(2)

Whether the Equal Protection Clause of the United States Constitution forbids the State of Georgia from exercising its peremptory strikes to exclude persons from a civil petit jury solely because of their gender on the assumption that members of that gender will be unable to impartially consider the case to be tried?

PARTIES TO THE PROCEEDING

Petitioner, Alan D. Tucker, was the only appellant below. The Appellee was the Georgia Department of Human Resources, Ex. Rel., Daniel Cassel.

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To The Supreme Court Of The
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PETITION FOR WRIT OF CERTIORARI

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CITATION TO OPINION BELOW

The decision of the Supreme Court of the State of Georgia is unreported, however, a copy of the order denying the Appellant's Motion For Reconsideration is attached hereto as Appendix A-29. The decision of the Superior Court of Glynn County, State of Georgia is unreported, however, a copy of the order is attached hereto as Appendix A-6 and A-10.

JURISDICTIION

The jurisdiction of this Court is invoked pursuant to 28 United States Code Section 1257(a). The judgment of the Supreme Court of the State of Georgia was entered on October 5, 1993. The order of the Supreme Court of the State of Georgia denying the Appellant's Motion For Reconsideration was December 3, 1993. This Petition is timely filed within ninety days thereafter.

CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection and Due Process Clauses of the Fifth Amendment and Fourth Amendment to the United States Constitution which read:

> "...[N]or be deprived of life, liberty, or property, without due process of law..."
>
> and

"...[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws..."

STATEMENT OF THE CASE

On January 9, 1990, Petitioner went to the local office of his family doctor, Dr. Carl M. Drury, M.D., to have a vasectomy performed.

On February 6, 199 , Dr. Drury examined a sperm sample of the Petitioner's seminal fluid and determined that the Petitioner was sterile and that it was thereafter impossible for the Petitioner to father any children.

Petitioner and his wife, Elise Tucker, separated in April of 1990, and were divorced on May 24, 1990. During the period of separation, the Petitioner lived at the Riverwatch Inn in Unit 405A. The Petitioner began renting Unit 405A on April 28, 1990, and resided there until September 28, 1990. On September 26, 1990, the Petitioner moved from Unit 405A to his home located at 160 Pierce Butler Drive, St. Simons Island,

Georgia.

On November 27, 1990, Sonja Cassel, the mother of Daniel Cassel, went to the medical office of Gowen, Dohn, Norvell, Ellenburg and Johnston. She was given a pregnancy test which revealed that she was pregnant. Ms. Cassel informed her doctor on November 27, 1990, that her last monthly period was on August 24, 1990, and the doctor calculated her expected delivery date (EDC) to be May 30, 1991. Ms. Cassel left the doctor's office and went to the local Department of Family and Children's Services where she applied for welfare and public assistance. She informed DFACS that she was three months pregnant. She also quit her job, and went to her father's home in Alabama.

On January 18, 1991, Dr. Norvell conducted a sonogram on Ms. Cassel to establish the age of the fetus because

Ms. Cassel's uterus was smaller than her dates indicated. A sonogram was also used to calculate the date of conception. On January 18, 1991, the estimated fetal age was 13 weeks, 6 days old, which meant her date of conception was October 27, 1990.

On April 12, 1991, Dr. Norvell conducted another sonogram on Ms. Cassel that indicated the fetal age was 26 weeks 2 days old, which made Ms. Cassel's date of conception to be October 24, 1990. Daniel Cassel was born July 26, 1991. He was a normal term baby with no signs that he was premature. The baby was noted at the time of delivery to have some meconium which further indicated that he was at least full term if not a few days past the due date.

Sonja Cassel became pregnant within a week of October 24 - 27, 1990. She did not get pregnant from any alleged sexual

intercourse with the Petitioner that occurred on or after November 17, 1990, or before September 28, 1990. Ms. Cassel testified that she did not have any sexual intercourse with the Petitioner after July, 1990, and only one time in November on, or about, November 17, 1990, and that it was a week after November 10 -- the Petitioner's Birthday -- when she became pregnant.

In December, 1991, the Georgia Department of Human Resources wrote to the Petitioner, a Brunswick attorney, advising him that one Sonja Cassel had named him as the putative father of a minor child, Daniel Cassel, and requesting reimbursement for money paid for the support of said child.

On December 13, 1991, Dr. Carl Drury conducted another examination of the Petitioner's seminal fluid and determined that the Petitioner was still sterile and

unable to father any children.

The Petitioner met with the State's representative at the appointed time on December 17, 1991, denied he was the father of the child, and furnished the State a doctor's medical affidavit signed by Dr. Carl M. Drury certifying that the Petitioner was and had been sterile since February 6, 1990, and medically could not possibly be the father of the child. The State, disregarding the medical certificate, filed the within action against the Petitioner on December 18, 1991, in the Superior Court of Glynn County, Georgia, under Official Code of Georgia Annotated Section 19-11-33 seeking recovery of the support money previously paid for the child, and filing a motion for blood and DNA testing.

On January 15, 1992, Judge A. Blenn Taylor, Jr., granted the Department of Human Resources Motion for a blood test

under Official Code of Georgia Annotated Section 19-7-45. On February 7, 1992 the Petitioner's Motion for Reconsideration was denied by Judge Taylor. The Petitioner filed an Application for Interlocutory Appeal with the Supreme Court for the State of Georgia on the 29th day of January, 1992, wherein Petitioner challenged the constitutionality of O.C.G.A. Section 19-7-45 as a violation of his rights under the Equal Protection Clause and a denial of his rights under the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution.

On February 19, 1992, the Supreme Court of the State of Georgia denied the Petitioner's "Application for Interlocutory Appeal" with Judge Benham dissenting. The Petitioner was thereafter required to submit to the blood

test.

Prior to jury selection, counsel for the Petitioner challenged the array and makeup of the jury panel. (T.5,10-12). The challenge was based upon the statistical and actual disparity of the jury panel with the actual population of Glynn County, Georgia. According to the jury list dated March 8, 1993, the initial list of 125 jurors contained 43 percent males and 57 percent females. After the jury list was printed, and prior to jury voir dire, there were an additional 9 male jurors excused which further reduced the statistical gender makeup of the panel to only 36 percent potential male jurors.

During general voir dire, Juror Scott Tarplee, and Juror Terry Dickson were excused for cause by the Court. After voir dire was completed, the State struck 5 other male jurors from the

panel. The jury selected for trial consisted of 8 females and 4 males. Counsel for the Petitioner renewed his objection to the array and the panel, and further objected to the State's use of its peremptory strikes to strike almost all males from the array. (T.39).

A jury trial resulted in a verdict against the State in its action for the recovery of the support money previously paid and an inconsistent finding of the Petitioner being the father of the child with an award of future monthly child support.

On May 25, 1993, Petitioner filed an "Application for Discretionary Appeal" pursuant to O.C.G.A. Section 5-6-35 in the Court of Appeals of the State of Georgia and the Supreme Court of the State of Georgia wherein the federal questions sought to be reviewed were again raised. The Supreme Court of

Georgia dismissed the Petitioner's Application for Discretionary Appeal on June 4, 1993. The Court of Appeals of Georgia denied the Application for Discretionary Appeal on June 17, 1993, and denied the Petitioner's Motion for Reconsideration on July 2, 1993.

The Petitioner filed a "Petition For Certiorari" with the Supreme Court of the State of Georgia on July 22, 1993, wherein the Petitioner again raised the federal questions sought to be reviewed. The Supreme Court of Georgia denied the Petitioner's Petition For Certiorari on October 5, 1993. The Petitioner filed a "Motion For Reconsideration" which was denied October 28, 1993, and a "Second Motion For Reconsideration" which was denied by the Supreme Court of Georgia on December 3, 1993. The Petitioner respectfully seeks a review of the decision of the Supreme Court of Georgia

which denied the Petitioner's Second Motion For Reconsideration. Neither the Court of Appeals of Georgia nor the Supreme Court of Georgia, rendered a written opinion explaining their reasons for denying the Appeals of the Petitioner.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS TWO IMPORTANT QUESTIONS. THE FIRST CONCERNS WHETHER THE OFFICIAL CODE OF GEORGIA ANNOTATED SECTION 19-7-45 VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION OF THE UNITED STATES AND SHOULD BE HELD TO BE UNCONSTITUTIONAL BECAUSE IT REQUIRES THE TRIAL COURT TO DISCRIMINATE AGAINST MALES WHO HAVE BEEN SUED BY THE STATE OF GEORGIA IN PATERNITY ACTIONS BY REMOVING FROM THE TRIAL COURT ITS DISCRETION AND ABILITY TO OBJECTIVELY REVIEW THE PENDING FACTS AND CIRCUMSTANCES IN THE MATTER SOLELY BECAUSE THE PETITIONER WAS BEING SUED BY THE STATE OF GEORGIA DEPARTMENT OF HUMAN RESOURCES?

THE SECOND CONCERNS WHETHER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION FORBIDS THE STATE OF GEORGIA FROM EXERCISING ITS PEREMPTORY STRIKES TO EXCLUDE PERSONS FROM A CIVIL PETIT JURY SOLELY BECAUSE OF THEIR GENDER ON THE ASSUMPTION THAT MEMBERS OF THAT GENDER WILL BE UNABLE TO IMPARTIALLY CONSIDER THE CASE TO BE TRIED?

ARGUMENT AND CITATION OF AUTHORITIES

1

O.C.G.A. Section 19-7-45 provides: "As soon as practicable after an action has been brought, the Court, upon motion of the petitioner, the respondent, or any other interested party, may order the mother, the alleged father, and the child to submit to any blood tests, including human leukocyte antigen (HLA) testing and genetic testing if available, which have been developed or established for purposes of disproving or proving parentage and which are reasonably accessible. In cases in which the Department of Human Resources is the petitioner, pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the Court shall upon motion of any party to the action order the mother, the alleged father, and the child to submit to such blood tests. If the Court orders

the blood tests and if the action is brought prior to the birth of the child, the Court shall order the blood tests made as soon as medically feasible after the birth. The tests shall be performed by a duly qualified licensed practicing physician, duly qualified immunologist, or other qualified person. Upon motion by a party, the Court may order that independent tests be performed by other experts qualified as examiners of blood types. In all cases, however, the Court shall determine the number and qualifications of experts. In all cases the results shall be made known to all parties at interest as soon as available. An order issued under this Code Section is enforceable by contempt, provided that if the petitioner refuses to submit to an order for a blood test, the Court may dismiss the action upon motion of the respondent."

O.C.G.A. Section 19-7-45 violates the Due Process and Equal Protection Clauses of the Constitution of the United States and of the State of Georgia in that it provides the Trial Court with discriminatory and alternative standards which completely remove any and all discretion from the Trial Court. In particular, said statute requires a different system of evidence and procedures for different classes of males in that with respect to certain paternity actions, it is within the discretion of the Trial Court to order a mother, a father or a child to submit to a blood test. However, in actions in which the Department of Human Resources is the petitioner, under O.C.G.A. Section 19-7-43(a)(4), the Trial Court's discretion is removed and it is mandatory that the Trial Court order such blood tests. Such inconsistency under the law provides a

dual system of justice and procedure depending upon who is the Plaintiff. In other words, if a mother, individually, employs an attorney and files a paternity action, the Trial Judge has the discretion as to whether or not to order a blood test upon motion of either of the parties. However, when the State Department of Human Resources employs an attorney to file a paternity action, such discretion is totally removed from the Court. The actions are identical in all other aspects, except for the criteria as to whether the mother of a child elects to employ the Department of Human Resources and use its attorney to prosecute the action, as opposed to employing private counsel. Such inconsistent classification of the laws and procedure violates the due process and equal protection rights of defendants and alleged putative fathers in said

cases and is unconstitutional on its face.

Prior to the State's motion for a blood test, the Petitioner provided the Trial Court with sworn statements and medical records which in and of themselves proved that the Petitioner could not be the father of the minor child, Daniel Cassel. Dr. Drury substantiated the Petitioner's vasectomy, his sterility, and his inability to father any children after February, 1990. Sonja Cassel's medical records proved that she became pregnant in October of 1990, even though she asserted in her deposition and later at trial, that she had sexual intercourse with the Petitioner only on one occasion, a week or so after November 10, 1990, and no intercourse with the Petitioner during the months of September and October, 1990.

O.C.G.A. Section 19-7-45 removed from the Trial Court its discretion and ability to objectively review the pending facts and circumstances in the matter solely because the Petitioner was being sued by the Department of Human Resources. Said section clearly violates the due process and equal protection clauses of the Constitution of the United States and should be held to be unconstitutional because it requires the Trial Court to discriminate against males who have been sued by the State in paternity actions. If the Petitioner had merely been sued in a paternity action which involved parties with private counsel, the Court would have been allowed to review the evidence at the time a motion for a blood test was made and then decided whether there existed sufficient cause and justification to require the Petitioner to submit to such

testing. Unfortunately, in cases where the State sues the alleged father, the Courts have no discretion to review any evidence, medical or otherwise, which results in the violation of the Petitioner's Constitutional Rights to equal protection and due process under the United States Constitution.

2

The Petitioner established a prima facie case of gender based discrimination in violation of the Equal Protection Clause of the Constitution of the United States by showing that the State used 5 of its 6 peremptory strikes against males in a paternity case which by its very nature pitted woman against man. The State used 83% of its strikes to remove 56% of the males from the jury, thereby significantly diminishing the male representation of the jury.

If this case was concerned with race

instead of gender, there would be no question that the Petitioner has clearly established a strong prima facie case of discrimination. The result should be no different because the discrimination was gender based. The affect of the discriminatory use of its strikes by the State to exclude members of the jury resulted in a "grossly disproportionate exclusion" of males in violation of the Equal Protection Clause of the Constitution.

Batson v. Kentucky, 106 S.Ct. 1712, 1723, 90 L.Ed 2d 69 (1986), holds that the Equal Protection Clause of the United States Constitution guarantees that peremptory strikes will not be used to exclude persons from a jury because of race on the assumption that members of that race will be unable to consider impartially the case to be tried. Edmondson v. Leesville Concrete Co. Inc.,

500 U.S.____, 111 S.Ct. 2077, 114 L.Ed 2d 660 (1991), has held that Batson, applies to civil litigants as well. In United States v. DeGross, 960 F.2d 1433 (9th Cir. 1992), the Court held that the Fifth Amendment's equal protection principles prohibited the use of peremptory strikes to exclude venirepersons on the basis of gender. Under Batson, once a prima facie case has been established by a party belonging to a cognizable racial group, the opposite party then has the burden to "Articulate a neutral explanation, related to the particular case to be tried" as to why it struck members of the jury who were in the cognizable group.

American society is made up of many different races, cultures, and economic backgrounds. Depending upon the geographic location, the makeup of the population varies drastically as to the

percentage of racial, cultural, and economic factors. The one factor that doesn't vary is the percentage of males and females throughout the various geographic regions. Sexual discrimination is now readily recognizable and properly forbidden in the workplace, the welfare system, the political system, etc... It should likewise be disallowed in the judicial system when litigants are seeking a fair and impartial jury to decide an issue that directs the sexes onto an often volatile collision course -- the issue of paternity.

Gender based discrimination which excludes men or women from the jury solely because of their sex due to the assumption that members of that sex will be unable to consider impartially the case to be tried, violates the Equal Protection Clause with no less significance than racial discrimination.

The results of gender discrimination are the same as those from racial discrimination, in that they preclude or prevent the party who is a member of the cognizable group from obtaining a fair trial from a fair and impartial jury.

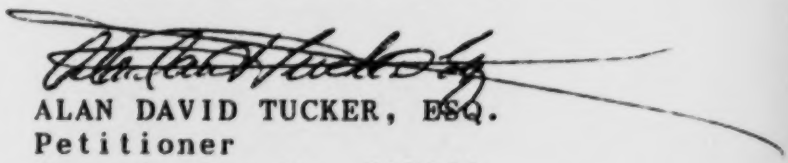
Once the Petitioner established a prima facie case of gender based discrimination in violation of the Equal Protection Clause, the Trial Court had a duty to determine if the State had an explanation which justified its use of its peremptory strikes in the manner so alleged. The Trial Court merely "noted" the objection in the present case and then moved on. No hearing was ever held to determine the basis of the State's use of its strikes. The failure of the Trial Court to conduct such a hearing was reversible error.

CONCLUSION

For all of the reasons set forth herein, it is respectfully requested that a Writ of Certiorari issue to review and reverse the judgment of the Supreme Court of the State of Georgia.

Dated: Brunswick, Georgia
February 28, 1994

Respectfully submitted,



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APPENDIX

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX.REL. DANIEL CASSEL,	$	CIVIL ACTION NO. 91-02151
Plaintiff,	$	
VS.	$	
ALAN D. TUCKER,	$	
Defendant.	$	

1.

OBJECTION AND OPPOSITION TO MOTION FOR ORDER COMPELLING BLOOD TESTS

COMES NOW the Defendant and hereby files his objection to the motion filed by the Plaintiff seeking a blood test and in support thereof, shows as follows:

1.

O.C.G.A. Section 19-7-45 violates the due process and equal protection clauses of the Constitution of the United States and of the State of Georgia in that it provides for disproportionate and alternate standards removing discretion

from the Court. In particular, said statute provides for a dual system of evidence and procedures for different classes of people in that with respect to certain actions, it is within the discretion of the trial court to order a mother, a father or a child to submit to a blood test. However, in cases in which the Department of Human Resources is a petitioner, under O.C.G.A. Section 19-7-43(a)(4), this discretion is removed from the Court and it is mandatory that the Court order such blood tests. Such inconsistency under the law provides a dual system of justice and procedure depending upon who is the petitioner. In other words, if a mother, individually, employs an attorney and files such an action, the Judge has the discretion as to whether or not to order a blood test upon motion of any of the parties. However, when an attorney employed by the

State Department of Human Resources or a welfare recipient employs such attorney to file an action, this discretion is removed from the Court. The action is identical in all other aspects except for the criteria as to whether the Plaintiff elects to employ the Child Support Recovery Unit to use their attorney to prosecute the action, as opposed to private counsel. Such inconsistent classification of the laws and procedure violates the due process and equal protection rights of defendants and alleged putative fathers in said cases.

2.

Attached to the Defendant's Answer are the Affidavits of the Defendant and two (2) Affidavits of Carl M. Drury, M.D. certifying that the Defendant in this case is sterile, is and was medically incapable of fathering the child and that

the examinations and tests performed by Dr. Drury are the highest standard of testing or evidence available and a blood test would be absolutely meaningless.

3.

A blood test is moot under the facts and circumstances of this case because irrespective of the outcome of a blood test, such a blood test is only a statistic probability or percentage of probability and, as a matter of law, is not and cannot be conclusive to establish or not establish paternity.

4.

There is no need or necessity for a blood test under the circumstances because irrespective of the outcome of the results, it is moot, immaterial and irrelevant because, medically, it is impossible for the Defendant to be the father of the child in this case.

5.

It would be a total abuse of this Court's discretion to order a blood test under O.C.G.A. Section 19-7-43.

6.

The Plaintiff in this case has failed to comply with O.C.G.A. Section 19-7-44.

WHEREFORE, your Defendant respectfully moves that the blood test ordered be denied and this court dismiss the Petition.

HUTTO, PALMATARY & MAGDA, P.A.

BY: s/s: G. Carroll Palmatary

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IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIA DEPARTMENT OF
HUMAN RESOURCES, EX. REL.
DANIEL CASSEL,

Plaintiff,

vs. CIVIL ACTION NO.
91-02151

ALAN D. TUCKER,

Defendant.

ORDER

This case having come before the Court on Plaintiff's motion for a blood test under O.C.G.A. Section 19-7-45, and argument of counsel on said motion having been heard and considered, said motion is hereby GRANTED.

Defendant challenges the provisions of the aforementioned statute, on the grounds that in paternity cases filed by by private litigants, the Court has discretion in the matter of blood tests, while in cases filed by the Department of Human Resources, a request for a blood

test must be honored. Requiring a litigant to submit to a blood test in a civil paternity action violates no constitutionally protected rights. Raines v. White, 248 Ga. 406 (1981). The Court finds that the statutory distinction between cases brought by the State agency and cases brought by private parties has a rational relationship to legitimate state interests. Paternity suits brought by private parties may be motivated by reasons other than those contemplated by the paternity determination statute, while the participation of the State agency can reasonably be expected to prevent abusive paternity complaints. In addition, a requirement that a blood test can be obtained, as a matter of right, by any party in a paternity complaint filed by the State assists in ensuring fairness to persons who must litigate against the State. If

the State could pursue paternity complaints while refusing to agree to blood tests which might terminate the proceeding at an early stage, defendants would be required to oppose the State and all of its litigation resources in cases when that could be unnecessary. These factors justify the statutory distinction between State-initiated paternity actions and paternity actions filed by private parties.

In the absence of a showing that the minor child has a medical condition that would make submission to a blood test an unacceptable risk, the absence of a guardian ad litem as of the time of the hearing on the motion for a blood test will not be found to bar the granting of that motion. However, the State is directed to seek the appointment of a guardian for the minor child, and the blood test shall not be conducted until

at least ten days after the guardian accepts the appointment, to provide the guardian with an opportunity to seek reconsideration of the ruling on said motion.

This 15th day of January, 1992.

s/s A. Blenn Taylor, Jr.
A. Blenn Taylor, Jr.
Judge, Superior Courts
Brunswick Judicial Circuit

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIA DEPARTMENT OF
HUMAN RESOURCES, EX RE.
DANIEL CASSEL,

Plaintiff,

vs. CIVIL ACTION NO. 91--2151

ALAN DAVID TUCKER,

Defendant.

ORDER

Defendant has requested reconsideration of this Court's Order of January 15, 1992, which granted Plaintiff's motion to require him to submit to an HLA blood test, on the ground that his argument that the statute under which said motion was made is unconstitutional.

To challenge the constitutionality of a statute, a party must allege that he has harmed by its provisions. In this case, Defendant asserts that his rights

have been violated because O.C.G.A. Section 19-7-45 arguably makes blood tests mandatory, upon the request of any party, in cases filed by the Georgia Department of Human Resources, while it allows the Court to exercise discretion in granting or denying such requests tests in cases filed by private parties. However, the constitutional issue raised by Defendant need not be reached, because the Court would have granted the request for a blood test even if the Department had not been the petitioner.

Defendant has provided an affidavit from his physician, alleging that it is medically impossible for him to be the father of Daniel Cassell. The Court has been unable to find any precedent for the notion that a party can block discovery of relevant evidence by presenting expert testimony that would, if left uncontradicted, entitle that party to judgment as

a matter of law. Since the proffered expert testimony involves a questions of medical fact, and medicine i s not an exact science, Plaintiff must be permitted to proceed with discovery related to that fact.

For the foregoing reasons, Defendant's motion for reconsideration of this Court's Order of Janaury 15, 1992 is **DENIED.**

SO ORDERED, this 7 day of February, 1992.

s/s A. Blenn Taylor, Jr.
A. BLENN TAYLOR, JR.
JUDGE, SUPERIOR COURTS
BRUNSWICK JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX.REL. DANIEL CASSELL,	&	CIVIL ACTION NO. 91-02151
Plaintiff,	&	
vs.	&	
ALAN DAVID TUCKER,	&	
Defendant.	&	

CERTIFICATE OF IMMEDIATE REVIEW

Defendant in the above proceeding has requested a Certificate of Immediate Review under the provisions of O.C.G.A. Section 5-6-34(b) of this Court's Order dated January 15, 1992 granting Plaintiff's Motion for a mandatory blood test under the provisions of O.C.G.A. Section 19-7-45. Defendant has challenged and opposed the Motion and challenged the constitutionality of the process by submitting competent medical evidence that it is medically impossible for him to be the father of the child,

and that the provisions of O.C.G.A. Section 19-7-45 deny him due process under the law by virtue of removing the Court's discretion to refuse to order a blood test. This Court feels that its Order of January 15, 1992 is of such importance to the case that immediate review should be had.

ACCORDINGLY, the undersigned hereby certifies within ten (10) days of the date of the entry of the Order that its Order as aforesaid is of such importance that an immediate review should be had by the Supreme Court or the Court of Appeals.

SO ORDERED this 22 day of January, 1992.

s/s A. Blenn Taylor, Jr.
A. BLENN TAYLOR, JR., JUDGE
Superior Court of Glynn County
Georgia

Case No. S9210536

SUPREME COURT OF GEORGIA

ATLANTA FEB 19, 1992

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ALAN D. TUCKER v. GEORGIA DEPARTMENT OF HUMAN RESOURCES, ex rel.

From the SUPERIOR COURT of GLYNN County.

Upon consideration of this Application for Interlocutory Appeal, it is ordered that it is hereby denied.

Clarke, C.J., Weltner, P.J., Bell, Hunt and Fletcher, JJ., concur. Benham, J., dissents.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

s/s Lynn M. Stinchcomb, Deputy Clerk

Portion of Trial Transcript, Page 5 Line 9-15.

Also, one final ground, and that is, looking at the array of the jury assembled, it appears that there is a disproportionate number of female potential jurors on the list, far in excess of the statutory or the historical percentage in Glynn County, and, as such, we would challenge the array upon the statistical makeup of the jury.

Portion of Trial Transcript, Page 11 Lines 10-25.

MR. PALMATARY: With regard to the challenge to the array, Your Honor, according to the jury list, the computer printout which has the date of March 8th, 1993, of the initial list of 125 typed names, only 43 percent are male, 57 percent are female, and checking Friday with the clerk's office, of those who have been excused, there were like nine additional men who were excused. That

leaves, apparently, this morning, of the original 125, only 36 percent of potential male jurors. As such, we would contend that on the statistical population of Glynn County, that we do not have a proper array to hear this case.

THE COURT: I'll hear any evidence you wish to offer to support your motion.

MR. PALMATARY: Your Honor, I would submit the clerk's list, the original court records, the clerk's list

Portion of Trial Transcript, Page 12 Lines 1-16.

that they keep. The court record would show that, and I would assume that the clerk has a copy of it here showing who was on the list and who has been excused.

THE COURT: Yes, and that will be part of the record. I'll hear any evidence you wish to offer.

MR. PALMATARY: Your Honor, what I would offer is that there were excused

from the list of jurors number four, nine, 15, 18, 23, 29, 33, 41, 44, 45, 48, 49, 54, 58, 61, 63, 64, 69, 73, 80, 88, 98, 93, 97, 100, 116, 119.

THE COURT: Whatever the record reflects will be controlling in the case. It's filed in the record. Once again, I'll hear any evidence you wish to offer at this time.

MR. PALMATARY: Nothing else.

THE COURT: All right, your motion to challenge the array is denied.

Portion of Trial Transcript, Page 39 Lines 2-15.

MR. PALMATARY: Your Honor, one additional, for the record. With regard to my prior motion of the array of jury and the number of men and the number of females, we'd like to object that the plaintiff in this case has systematically and arbitrarily used her peremptory strikes to strike almost all males from

the array, leaving the jury constituted with a substantial majority of females versus males. I believe it's eight females and four males on the jury panel selected. As such, we would again renew our objection to the array and the panel we had to choose from.

THE COURT: Ms. Skelton, any response?

MS. SKELTON: No, Your Honor.

THE COURT: All right, it's noted.

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

GEORGIA DEPARTMENT OF
HUMAN RESOURCES, EX REL.
DANIEL CASSEL,

Plaintiff,

vs. CIVIL ACTION NO.91-02151

ALAN DAVID TUCKER,

Defendant.

JUDGMENT ON JURY VERDICT

This action having come before the Court for trial by jury, and the jury having rendered its verdict, it is hereby

ADJUDGED AND DECREED that the Defendant, Alan D. Tucker, is the father of Daniel Cassel, a minor child.

Defendant shall pay child support in the amount of $345.00 per month, with the first such payment due on May 1, 1993, and subsequent payments due on the first day of each month. Said support payments shall continue until the child reaches the age of eighteen, marries, dies, or

becomes fully self-supporting. The payments shall be made to the Child Support Receiver of Glynn County, and Defendant shall be responsible for the statutory fee for such payments.

Defendant shall provide medical insurance coverage for the minor child, during the period he is obligated to pay child support for said child. Defendant shall be responsible for one-half of all necessary medical expenses incurred on behalf of the child which are not covered by insurance. In the event the mother of the minor child has access to health insurance coverage for the child through her employment or otherwise, and she and Defendant agree that such coverage is better that what Defendant has obtained, the parties by mutual consent can agree to make such coverage available for the child by having Defendant reimburse the mother for her out of pocket cost of

securing such coverage.

Plaintiff is awarded the sum of $2042.00 as attorneys fees, and $1428.00 as expenses, and court costs are assessed against Defendant. Defendant shall pay the aforesaid sum of $3470.00 to Plaintiff by making five payments of $600.00 each on the first day of each month commencing with June 1993, and a final payment of $470.00 on the first day of November, 1993. Said payments shall be made to the Department of Human Resources, Child Support Enforcement, P.O. Box 1624, Brunswick, Georgia 31521-1624.

Plaintiff has requested repayment of public assistance paid for the benefit of the minor child. No request for such repayment was made in opening or closing argument by Plaintiff. The form on which the jury entered its verdict, which did not provide for recovery of public

assistance, was inspected by counsel and no objection was made to said form. Under these circumstances, Plaintiff is not entitled to judgment against Defendant in the amount of public assistance paid on behalf of the minor child.

This 27 day of April, 1993.

s/s A. Blenn Taylor, Jr.
A. BLENN TAYLOR, JR.
JUDGE, SUPERIOR COURTS
BRUNSWICK JUDICIAL CIRCUIT

Case No. S93D1315

SUPREME COURT OF GEORGIA

ATLANTA JUN 04, 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ALAN D. TUCKER V. GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX. REL. DANIEL CASSELL

From the SUPERIOR COURT of Glynn County.

Upon consideration of this Application for Discretionary Appeal, it is ordered that it is hereby dismissed.

All the Justices concur, except Clarke, C.J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

s/s Lynn M. Stinchcomb, Deputy Clerk

Court of Appeals

of the State of Georgia

ATLANTA, JUNE 17, 1993

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A93D0200

ALAN D. TUCKER v. GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX REL. DANIEL CASSELL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93024

9102151

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/s Victoria McLaughlin, Clerk.

Court of Appeals

of the State of Georgia

ATLANTA, JULY 02, 1993

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A93D0200

ALAN D. TUCKER v. GEORGIA DEPARTMENT OF RESOURCES, EX REL. DANIEL CASSELL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

93-024
91-2151

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/s Victoria McLaughlin, Clerk.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: OCTOBER 05, 1993

G. Carroll Palmatary
HUTTO, PALMATARY & MAGDA, P.A.
P. O. Box 1475
Brunswick GA 31521

Case No. S93C1608

ALAN D. TUCKER V. GEORGIA DEPARTMENT OF HUMAN RESOURCES ET AL.

COURT OF APPEALS CASE NO. A93D0200

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

s/s Sherie M. Welch, Clerk

SUPREME COURT OF GEORGIA

ATLANTA OCTOBER 28, 1993

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Case No. S93C1608

ALAN D. TUCKER V. GEORGIA DEPARTMENT OF HUMAN RESOURCES ET AL.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

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Witness my signature and the seal of said court affixed the day and year last above written.

s/s Sherie M. Welch, Clerk

S93C1608

SUPREME COURT OF GEORGIA

Atlanta DEC 3, 1993

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ALAN D. TUCKER v. GEORGIA DEPARTMENT OF HUMAN RESOURCES et al.

It is ordered that the Second Motion for Reconsideration, in this case, received on November 12, 1993, is hereby allowed filed.

It is further ordered that upon consideration of such motion, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

Clerks Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/s Lynn M. Stinchcomb
Deputy Clerk